

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN D. COULOMBE and U.S. POSTAL SERVICE,
POST OFFICE, Lubbock, TX

*Docket No. 02-2380; Submitted on the Record;
Issued March 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$121.35; and (2) whether the Office properly found that appellant was at fault in the creation of the overpayment.

On July 10, 2001 appellant, then a 40-year-old mailhandler, filed a claim for injuries to his right knee, lumbar spine and right ankle sustained on that date when he "slipped on a piece of cardboard." The Office accepted appellant's claim for a lumbar sprain/strain and a tear of the meniscus of the right knee. Appellant underwent a reconstruction of the right knee anterior cruciate ligament on September 17, 2001. The Office placed appellant on the periodic rolls effective August 24, 2001.

The record reveals that appellant returned to limited-duty employment for six hours per day on December 22, 2001.

In a letter dated April 10, 2002, the Office informed appellant that he had received an overpayment in the amount of \$546.00 for the period December 2 to 29, 2001, \$2,002.21 for the period December 30, 2001 through January 26, 2002 and \$81.48 for March 12, 2002.

In letters received by the Office on April 23, 2002, appellant related that he returned to work for 30 hours per week beginning December 22, 2001. Appellant stated that he received an overpayment of compensation in the amount of \$455.05 as he received compensation for total disability through December 29, 2001. He related:

"Since no request was made for me to return the overpayment, I accepted the money to offset the 10 hours a week that the [Office] was going to pay me for the next pay period. This offset paid for my compensation through the week ending January 18, 2002."

Appellant stated that he was returning the check for the period December 30, 2001 through January 26, 2002. He further noted that he was entitled to compensation for March 12, 2002.

An Office claims examiner recalculated the amount of appellant's overpayment by subtracting from the amount owed by appellant the amount returned for the period December 30, 2001 through January 26, 2002. The claims examiner found that appellant had returned to work for six hours per day on December 18, 2001 and concluded that he owed \$121.35.

On May 30, 2002 the Office informed appellant of its preliminary determination that he had received an overpayment of compensation in the amount of \$121.35 because he returned to work part time on December 18, 2001 but received compensation for total disability for the period December 2 to 29, 2001. The Office further notified appellant of its preliminary determination that he was at fault in the creation of the overpayment. In addition, the Office advised appellant that he could request a telephone conference, a final decision based on the written evidence, or a hearing within 30 days of the date of the letter if he disagreed with the fact or amount of overpayment, the determination of fault, or if he believed that recovery of the overpayment should be waived. The Office requested that appellant complete an accompanying overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents.

By decision dated August 16, 2002, the Office finalized its preliminary determination regarding the amount of the overpayment and finding that appellant was at fault in the creation of the overpayment. In addition, the Office ordered repayment of the overpayment amount within 30 days.

The Board finds that the case is not in posture for decision on the issue of whether appellant received an overpayment of compensation.

In this case, the Office determined that an overpayment of compensation in the amount of \$121.35 existed because appellant received compensation for temporary total disability from December 2 to 29, 2001 even though he returned to work part time on December 18, 2001. The Office calculated the overpayment by determining the amount owed appellant for the periods December 2 through 29, 2001 and December 30, 2001 through January 26, 2002 and subtracting this from the amount paid to appellant for that period. The Office then subtracted from this calculation the amount returned by appellant for the period December 30, 2001 through January 26, 2002. The Office concluded that appellant owed \$121.35. However, the record indicates that appellant resumed part-time employment on December 22, 2001 rather than December 18, 2001. Therefore, it appears that the Office based its overpayment calculation on an erroneous return to work date for appellant. Consequently, it is unclear whether an overpayment exists for the period December 2 through 29, 2001 and the amount of any overpayment. The case, therefore, will be remanded for the Office to determine the existence and amount, if any, of overpayment.¹

¹ Due to the disposition of the first issue, the second issue is moot.

The decision of the Office of Workers' Compensation Programs dated August 16, 2002 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
March 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member